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THE RAID ON MEDICARE

By Kelly Hearn

Earlier this month, the Bush administration announced a 17 percent increase in Medicare premiums, saying the hike was necessary to pay for added services and general increases in expenses. But the news rekindled criticism of the Medicare Modernization Act of 2003, a.k.a. the "Medicare prescription drug bill." That massive bill — estimated to cost the federal government $534 billion over the next 10 years — essentially means windfall profits for the pharmaceutical industry and substandard benefits for the average senior citizen. What's more, it ties up the government's hands, barring it from negotiating lower drug prices with manufacturers, the way other agencies like Medicaid and Veterans' Affairs do.

The biggest expansion of coverage since Medicare was established in 1965, the bill - signed into law by President Bush last December - was supposed to provide coverage for drugs that senior citizens consume at home (the regular Medicare program just pays for drugs given in hospitals and doctors offices). But after being chewed on by nearly 1,000 drug industry lobbyists and washed down with millions of dollars in campaign contributions, the measure stumbled embarrassingly short of its mark. It became a symbol of the grip that the pharmaceutical industry - Big Pharma - has on Washington.

In essence, passage of the law was akin to a major heist. And what taxpayers and seniors lost — and what big pharma gained — is only beginning to emerge. So is the issue of how they pulled it off. Given the differing record and positions of Bush and John Kerry, the outcome of Nov. 2 could have a significant impact on the health and pocketbooks of millions of Americans.

"The bill is tragic," says Alan Sager, a Boston University professor who has closely studied the new law with his colleague, Deborah Socolar. "While this law will help some seniors get drugs they need, my colleague and I predict drug-makers will garner $139 billion dollars in increased profits over eight years, thanks to this new benefit, as inadequate as it is to patients and as expensive as it is to the federal government."

The Congressional Budget Office projected the law will cost taxpayers $400 billion over 10 years, but after it was enacted, the Bush administration revealed that the costs could reach $534 billion (that potentially illegal withholding of data is the subject of a federal investigation).
Sager and Socolar calculated in October of 2003 that 61 percent of Medicare dollars spent to buy more medicine will become profit for drug-makers.

Bill of Goods

The impetus for the law was that it would do a ton for the people who need drugs most. Did it?

John Rother, policy director for the AARP, which supported the bill, calls the law "a first step" that benefits low-income seniors, nearly a third of whom will qualify for "very generous benefits worth $4,000 a year with no premiums or deductibles." It will also help seniors with the most expensive drug bills, he says. But for those with moderate drug needs, the benefits "will provide only modest help."

Some critics say that unbalanced coverage creates an unacceptable "donut hole." According to Public Citizen, once the law takes effect in 2006, the poorest seniors making less than $12,000 (or $16,400 if a couple) will be spared nearly all costs if their assets, not including a car and home, are less than $6,000 for a single person and $9,000 for a couple. The other two-thirds of seniors will face a $420 premium, a $250 deductible and a share of the cost of drugs that will vary according to the size of the bill. By 2006, the watchdog group says, the average senior will face $3,160 in total drug costs; under the new law, seniors will still have to cough up 66 percent of that amount.

Big Pharma came out smelling better.

For its lobbying efforts, it landed a motherlode of future customers. The Medicare Rights Center, an advocacy group, says Medicare enrolls 35 million adults aged 65 and over and six million younger persons with disabilities. The typical Medicare beneficiary has an annual income of $14,300 and at least two chronic health conditions. Extending a drug benefit to those millions means a mammoth expansion of Big Pharma's customer base.

But the industry hit the jackpot in two other ways: getting those new customers while avoiding any price controls and blocking legislative attempts to let Americans buy cheaper drugs from other countries.

The new Medicare law expressly prohibits the federal government from bargaining with drug-makers for lower drug prices, something private insurers, Veterans Affairs and Medicaid already do. In a move that essentially privatizes Medicare, lobbying force melded with free market ideology to splinter the program's bargaining power among a set of private insurers charged with carrying out the benefit.

"It is almost a laughable proposition when you have an entity like Medicare with the purchasing power of 41 million people and they cannot negotiate
with industry," says Congressman Bernie Sanders, (I-VT), who voted against the bill. "That is a direct result of the pharmaceutical lobby, which in my view, is heads and shoulders above the rest in terms of power."

Critics of the law, including Democratic Presidential nominee John Kerry, say the bill also hands out $46 billion in subsidies to industry. Traditionally private health plans have stayed out of the Medicare market. To get them involved, the Medicare law offers these private industry players higher reimbursement levels than traditional fee-for-service coverage.

"Basically, in order to create incentives for private plans to participate, there were significant overpayments made to HMOs," says a former Clinton administration official who asked to remain anonymous. "By paying health plans and insurers more than they would pay traditional Medicare to offer the same benefit, they incentivized or bribed them to participate so the overall mechanics would work."

Complicating matters, say insiders, is that while money should flow to health plans, executives worry the cash won't materialize, especially given the recent prediction by the Congressional Budget Office of a record $422 billion federal budget deficit in fiscal 2004.

Big Pharma faces big battles to help keep the effective ban on reimportation intact. Industry and other supporters of the ban claim medical safety is at stake and the Bush administration has said it will not assume responsibility for ensuring the safety of imports. One estimate cited by Public Citizen says keeping the ban in place is worth $40 billion over ten years.

"In a globalized economy, we can import every conceivable product but somehow we can't reimport drugs into America from counties like Canada where they're sold for a fraction of the cost," Rep. Sanders says. "Again, the overwhelming reason is the power of the pharmaceutical lobby."

Conversations about whether or how to rein in its wealth, power and dubious tactics cut deep into the American character. They have to do with the public role of private medicine makers, the practicality of market controls and the idea that big drug companies should face higher public standards because their wealth relies on public favors like tax breaks and federally-protected patents.

For supporters of the law, price controls run counter to American ideals of market economics.

"'Bargaining clout' actually means price controls," says Stuart Butler, an analyst for the conservative Heritage Foundation. "In all other parts of the economy and in other countries where there are such controls, quality and availability suffer. If it were not so, we should simply have the government use its 'bargaining clout' to get us a vast range of wonderful products at a cheap price, just like residents of the Soviet Union enjoyed."
Drug companies argue that price controls will cut into research and development of new medicines. But experts like Marcia Angell, former editor-in-chief of the New England Journal of Medicine, disagree. Angell claims in her new book, "The Truth About Drug Companies; How They Deceive Us and What to Do About It," that big drug companies garner most of their success not from novel new drugs but from so-called "me-too" drugs that are merely molecular variations of popularly selling drugs. What's more, she claims, advertising and marketing — including salaries and executive benefits — almost always outpace investment in research.

Cost of Doing Business

In what is probably a record, the pharmaceutical industry, HMOs and related interests spent some $141 million dollars employing 952 lobbyists to help ensure the Medicare law went its way, according to a report from Public Citizen. Working off federal disclosure forms, the group also reported that The Pharmaceutical Research & Manufacturers Association (PhRMA), which represents more than 40 big-name drug companies, alone spent more than $16 million, a 12 percent increase from the previous year. That money bought 136 lobbyists in 2003.

"Certainly this was the biggest lobbying effort in recent memory and perhaps the biggest ever unleashed," says Craig Aaron, an investigative reporter for Public Citizen.

A PhRMA spokesman, Court Rosen, says the industry doesn't discuss its advocacy tactics. But watchdog groups and Hill insiders say the tactics are costly, well-honed and still very active.

The Center for Public Integrity says industry trade groups like PhRMA and Biotechnology Industry Organization (BIO) and just the top 18 drug companies in the Fortune 1000 have spent more than $430 million employing a team of almost 1,200 lobbyists since 1998. According to one Washington Post account, since the 2000 election, the industry has contributed $60 million in political donations and spent $37.7 million in lobbying in the first six months of 2003.

For the new Medicare law at least, the investment paid big.

"While they could have been big losers," says Dean Baker, co-director for The Center for Economic and Policy Research, a Washington think-tank, the pharmaceutical industry "walked away with a massive government subsidy that will likely increase their profits by more than $100 billion over the next decade."

Kerry, Bush and Big Pharma

Politically, the new law seems to have become a sweet lemon for Bush and a whipping post for Kerry. Observers say the President has failed to reap the kudos he expected from the law, though he still pitches it as a
market-oriented boon to seniors. Kerry and the Democrats say it's a flawed measure evidencing a far too cozy relationship between the Bush administration and the pharmaceutical industry. Kerry has called for allowing reimportation and letting the government negotiate over drug prices.

Lots of senior citizens are upset and both campaigns have surely taken notice. A survey released in August by the Harvard School of Public Health and the Kaiser Family Foundation showed almost half of the Medicare enrollees have an unfavorable view of the new law. A quarter had a favorable view. Nearly three in 10 said the law would have an impact on their vote in the presidential race. Of that group, 44 percent (or 12 percent of all Medicare beneficiaries) said it would make them more likely to vote for John Kerry. Eighteen percent (five percent of all beneficiaries) said it would make them more likely to vote for George Bush.

On the Hill, insiders say the Medicare law is somewhat of an orphan. Conservative Republicans are testy because the law spends money wastefully and brings them no credit. Liberals complain that the benefits are lousy. And moderates believe the money could have been spent in better ways.

As the election approaches, several bipartisan efforts are mounting in Congress to lift the reimportation ban. But Senate Majority Leader Bill Frist said this month that the Senate probably wouldn't vote on the matter before the elections. But supporters of reimportation (who've already passed legislation in the House) called on Frist to bring the matter up for vote or risk opening a scorching debate on drug prices on the eve of the election, according to a report this week in The Hill, a political newspaper in Washington. The AARP, perhaps the only political gorilla that can truly wrestle with Big Pharma, is also pushing to allow reimportation and to let the secretary of Health and Human Services negotiate with drug companies, says spokesman Rother. He says the group is also working on several "mostly technical" issues designed to contain drug prices and boost consumer protections in the program.

Against that backdrop, Big Pharma's lobbying machine keeps on ticking: So far this Congressional session, the Center for Public Integrity reported last month, 113 pharmaceutical bills have been introduced dealing with issues such as patent extensions and tax breaks for drug companies.

Got remedy?

"The good 'fashioned process of voting out the people that depend on the industry's money," says Rep. Sanders.

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